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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

In re DAKOTA J., et al., Persons Coming
Under the Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent,

v.

STACEY J.,

Defendant and Appellant.

B212460

(Los Angeles County
Super. Ct. No. CK74743)

APPEAL from an order of the Superior Court of Los Angeles County,

Terry T. Truong, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant
and Appellant.

James M. Owens, Assistant County Counsel, and Navid Nakhjavani, for Plaintiff
and Respondent.

In this dependency case (Welf. & Inst. Code, § 300 et seq.),¹ Stacey J., the mother of three dependent children (Mother) appeals from a disposition order that requires her to submit to on-demand testing for drugs and alcohol if and when the Los Angeles County Department of Children and Family Services (the Department) determines that there is a concern warranting such testing. Mother contends there is insufficient evidence in the record to support subjecting her to such tests. We disagree. Therefore, the disposition order will be affirmed.

BACKGROUND OF THE CASE

1. Detention of the Minors

The minors in this case are Dakota J., born in September 1997, Joseph B., born in November 1999, and Faith J., born in April 2005. The Department filed its section 300 petition on behalf of the children on September 24, 2008.²

The detention report states the children were detained by the Department social worker on the morning of September 19, 2008, because of Mother's severe neglect of them and the family's prior history with the Department. Regarding the prior history, allegations of Mother's general neglect of Dakota and Joseph were substantiated in November 2000. Two referrals for such general neglect were generated in February

¹ All references herein to statutes are to the Welfare and Institutions Code.

² Jon B. is the father of the minor boys, Dakota and Joseph. Edwin G. is listed as the father of Faith in the section 300 petition, but Mother told the Department social worker that she would not confirm that he is indeed the child's father. However, at the detention hearing, Mother stated Mr. G. considers himself to be Faith's father. By the time of the disposition hearing, neither man had been located by the Department, and the allegations against them in the dependency petition were held in abeyance by the court.

2006 and May 2007 and determined to be unfounded. And in January 2008, a referral for general neglect of the boys, and severe neglect of Faith, was made and later determined to be substantiated.

Based on the substantiated January 2008 referral, the Department had several subsequent contacts with Mother but did not detain the children at those times. Specifically, the detention report states that over the course of several months prior to the day the minors were detained in September 2008, Mother refused to take a random drug test; she stated that Joseph's threats of wanting to hurt himself and commit suicide were more than two years old and were just manipulative efforts on his part to obtain what he wanted; she refused to take Joseph to be evaluated by a psychiatrist regarding his threats of suicide and his suicidal ideation; she turned down services from the Department; she turned down intervention services from the boys' school regarding the school's concern that the boys were frequently coming to school late and hungry, and she asserted that the boys do not go to school hungry, and if they were late it was for a good reason; she refused to attend a Department Team Decision Meeting about these matters and others, and asserted she would obtain legal services because the Department was harassing her; and she failed to follow through with providing the social worker verification of medical treatment of the minor Faith's heart murmur.

Mother's day care provider was interviewed in February and March of 2008. The provider stated that all three children have arrived at day care smelling of "dirt, must and cigarettes" and she (the provider) has washed their dirty clothes. She also stated that the boys miss school "a lot"; Mother sometimes gives the children half of an

Excedrin PM sleeping pill to help them sleep; and the boys told the provider that Mother gives them money to buy food at a liquor store located across a busy street they have to cross. The provider also stated, when she was interviewed, that Joseph had two weeks of homework and school bulletins in his school backpack.

Due to these ongoing concerns, on September 15, 2008, four days before the minors were detained, the social worker went to Mother's home but Mother was not there. The worker interviewed one of Mother's neighbors and the managers of the trailer park where Mother and the children live. The worker also went to the school that Joseph attends and that Dakota had attended during the prior school year, and interviewed both Joseph and the boys' teachers.

The neighbor at the trailer park told the social worker that he feels sorry for the children because they often complain of being hungry but Mother will not let the children take food offered by the neighbor. He stated the children's hair is not cut; their clothes are often dirty and have holes in them; Mother stays up "all through the night and the kids do too"; and Mother lets the children "play outside at all times of the night." He stated again that he feels sorry for the children because they need more attention and supervision. He stated he was not sure if Mother uses drugs, but he has seen her when she appeared to be under the influence of alcohol.

The managers of the trailer park stated they have known Mother for six years. One manager stated the children are often outside and Mother is not around to supervise them. The children cross a busy street by themselves. The other manager stated Mother's trailer is "filthy," with a very dirty carpet and dirty clothes everywhere, and

the children wear dirty clothes. He stated Mother and the children stay up very late and sometimes disturb the managers and the neighbors. He also stated he thinks Mother uses drugs, and he sees the “drug guy” leave a package for Mother when she is not at home. He stated that at the times he has seen the drug guy with Mother, Mother “looks dizzy—a little crazy looking.” He and the neighbor both stated Mother smokes cigarettes a lot, and he stated the children’s clothes smell of smoke. The other manager stated she has smelled marijuana on Mother.

When interviewed at school by the social worker, the minor Joseph confirmed that the family does not have enough food. He stated he had a banana for dinner the night before and a piece of apple for breakfast that day, and the children sometimes eat cereal for both breakfast and dinner because there is nothing else to eat. Asked why the boys stay outside so late on school nights, he stated it was because “mom’s friend comes over and we have to go outside” and this happens four to five times a week. He stated the friend gives them money to buy ice cream. Joseph stated Mother drinks alcohol each day but does not “get drunk.” Asked what it means to be drunk, he stated it means when a person is dizzy, can’t stand, or falls down. He stated Mother drinks twice a day in the summer “but now only once a day at night to relax.” He stated she smokes a lot of cigarettes but does not smoke “weed” and Mother does not permit anyone to smoke weed in the home. Joseph told the social worker that he believes Mother takes good care of him, and he had no worries or concerns. Dakota was not interviewed at school, but on the day the children were detained by the social worker, Dakota stated he is comfortable in the family home, does not feel he is abused or

neglected in any way by Mother, and wished to continue residing with her and his siblings.

The boys' teachers reported that the boys have a history of often coming late to school, sometimes hours late. Further, they were often hungry when they got to school but because they arrived late they were not able to have breakfast there. They were also dirty and wore dirty clothes at school. Dakota's teacher stated the child often came to school without his homework and textbook, he had trouble keeping track of assignments, was easily distracted, and sometimes put his head down and appeared to be very tired.

At the time the social worker detained the minors in September 2008, she was not able to find any clothes for the children in the family home that were clean, including the clothes that were in drawers. The foster mother to whom the minors were taken reported that Joseph's shoes smelled like feces, Faith's finger nails and toe nails were dirty, and her toe nails were so long they curled to the bottom of her feet. Further, Faith had lice and fleas in her hair, a rash on her neck, back, buttocks and arms, dark rings under her eyes, and red marks around the bridge of her nose. The foster mother took the minors for a medical examination. Faith was found to have vaginal redness and irritation because she had not being properly cleaned for a long time, and given the severity of the problem, the doctor ordered a forensic exam for all three children, the results of which were pending at the time of the dependency court's detention hearing. The boy's general medical exams were unremarkable.

At the September 24, 2008 detention hearing the court found a prima facie case for finding that the children are persons described by section 300 and for detaining them in shelter care. Family reunification services were ordered, including parenting and individual counseling referrals for Mother, a public health nurse referral for Faith, and medical services for the children. Unmonitored visits for Mother of no less than four hours per week in a neutral location were ordered.

2. *Adjudication and Disposition*

a. *The Department's Report*

The Department's jurisdiction/disposition report states that Dakota and Joseph reported to the social worker on October 1, 2008, that Mother drinks alcohol but not a lot, and she does not use drugs except for "the healthy ones, the ones that help her." Dakota stated the children always have clean clothes and food but once they ate cereal for two days because they ran out of food and money. He denied ever going to school hungry. Asked about arriving at school late, he stated that it was just sometimes the children were late to school. Joseph also stated he never went to school hungry, there was always food in the home, they " 'mostly ate cereal because we like it'," and they always had clean clothes to wear. They disagreed on when homework was to be done. Joseph stated the boys were allowed to play outside until eight or nine and then they would go inside the home and do their homework. Dakota stated the boys were permitted to play outside after they had done their homework, and at 7:30 they were called in to eat their dinner and then could play another 30 minutes.

Both boys stated they would go across the street to their friend's home and play, and the friend's mom, or mom and dad, would watch them, or another friend's mom would watch them. Faith stays in the home with Mother. Asked about their father, they stated he is in jail and neither child was sure when they last saw him. Both stated they wanted to go home to live with Mother.

A CLETS search revealed that Mother had been charged with willful child cruelty but the charge was dismissed. Mother was interviewed and stated she drinks beer occasionally but not to excess, and had not used marijuana since she was a teenager. She was 39 years old at the time of the interview. She stated that she attempted to help out the minors' father's adult son by letting him stay at her home but she made him leave because he was smoking "weed" in the house. She stated she is employed as a manager at a postal center and had worked there since 1995. Her monthly income is \$800, her rent is \$615, and the utilities cost approximately \$100. Prior to the minors being removed from her care, she was receiving aid and food stamps. Mother agreed to attend parenting classes and submit to one toxicology test. The record contains the results of an October 2, 2008 test wherein Mother tested negative for alcohol and all drugs for which she was tested.

Mother explained Faith's vaginal rash by saying that the child gets " 'a slight rash' " because she is being potty trained but the rash goes away when Mother bathes her, and on the morning the Department social worker came to detain the children, Mother had not yet bathed Faith and that is why the foster mother noticed the rash. She stated Faith touches herself but Mother lets her because it is normal for the child to

explore her body. Mother stated that what appeared to be flea bites on Faith were actually marks from the children's cat's claws. Mother denied that the children have gone hungry in the morning. She stated she always feeds them in the morning and when there is no time to eat at home she buys them food "like at Jack-in-the-Box," but that perhaps once or twice they did not eat breakfast before they went to school "because we were running late or something." She added that the minors always have access to food at home. Mother also asserted that she never leaves them alone, she is always home with them or she takes the boys to work with her, and when the boys play it is in the trailer park or at a friend's house across the street, which is gated and the friend's mother or Mother's neighbors watch the children, while Faith stays inside with her. She could not provide the social worker with the names and phone numbers of those adults.

One of the trailer park managers was reinterviewed on October 6, 2008, and he stated he has seen Mother with alcohol but never observed her to be drunk. He also stated he has never seen Mother use drugs but in his opinion Mother needs to be tested. He stated that Mother's face "sometimes looks different" and she "doesn't look normal." He opined that before the children are returned to Mother, Mother should enroll in rehab for drugs and alcohol. He stated the children play outside and no one watches them, and the children "go across the street and no one watches them'." He also stated the children are usually fairly clean, and he has never seen them " 'really dirty'."

The foster mother told the social worker that the minors are well behaved at her home but have very little structure and she is working on that issue. She had begun receiving notes from Joseph's school about his behavior. She discovered that the children do not know how to maintain hygiene, and Dakota told her he did not brush his teeth when he lived with Mother because his toothbrush was dirty and ugly. The rash that Faith had on her neck, back, buttocks and arms the day she came to the foster mother's home disappeared the day after the foster mother bathed her. However, Faith was constantly touching and playing with her vaginal area, and the doctor recommended that the child be bathed twice a day because of her vaginal irritation. Also, the child's head was sore from her scratching it because of head lice. Regarding visitation, Mother cancelled a September 28 visit because of car trouble and she had a visit on October 6, 2008.

The Department recommended that the children remain in foster care. It also recommended that Mother have monitored visits, participate in parenting classes and in a substance abuse program, and submit to random testing, and that the boys participate in individual counseling and grooming and hygiene instruction.

b. *Adjudication and Disposition*

Mother testified at the adjudication/disposition hearing. Asked about the indication in a Department report that she told a social worker in January 2008 that she went through rehab but had not taken drugs "for awhile," Mother stated that the rehab program she went through was a nine-month parenting program and she participated in the program because she believed it would help her and it did. She stated she learned

how to properly feed and bathe the children, watch for signs of drugs and gangs when the children get older, and to keep them busy, away from that behavior. Mother stated the social worker told her, at the time of his visit to her home in January 2008, that the children were clean but that she would have to take drug tests, and she told him that her past was just that—past, and she was doing well and drug tests were intrusive, and she did not take the tests. Approximately two months later, the Department again came to her home to investigate, this time for allegations that the children were not going to school and they were not clean. Mother stated that the social worker found the children to be clean but stated Mother should drug test. Mother stated the reason for the insistence that she test was because she had previously stated she was in rehab.

Asked about a statement from the children's day care provider that the boys missed a lot of school, Mother stated school was missed for about two months because she was injured and incapacitated, and it took that long to recover. She was the person responsible for taking the boys to school, which was five miles from their home, and she could not drive them when she was on pain medication, and pain prevented her from driving them when she was not on such medication. Mother stated she could not find anyone to transport the children to school and the only bus available was public transportation and the children were too young to use the bus. Mother denied the day care provider's statement that the boys do not use a cross walk when crossing a street, but then she admitted that "they may have on a couple of occasions.

Mother admitted that she let the boys stay up late. She stated they stayed up until 10:00 p.m., on school nights, but they were permitted to turn the television on in their

room after 10:00 p.m. if they were not able to sleep, because the television would help them fall asleep. Mother stated the children's doctor told her it would be all right to give the boys one-half of a Tylenol P.M. if they could not sleep, and so she did that two or three times in a two-week period. Asked about the day care provider's statement that the children came smelling of dirt, must and cigarettes, Mother only addressed the cigarette matter, saying the provider always complained about Mother smoking.

The Department and Mother's attorney agreed on amendments to the section 300 petition that struck certain allegations from it. Among those that were stricken were that Mother has a history of substance abuse, she was currently using alcohol and marijuana which renders her incapable of providing the minors regular care and supervision, on prior occasions she had been under the influence of alcohol and marijuana while the minors were in her care, and the substance abuse endangers the children's health and safety and creates a detrimental home environment.

The dependency court found the following allegations in the petition to be true. Mother failed to provide adequate care and supervision for the minors; Joseph and Dakota have gone to school hungry, dirty and late; and Faith was suffering from bug bites and from vaginal redness and irritation due to not being cleaned properly.

The children were declared dependents of the court, and a home of parent order for Mother, with supervision by the Department, was made. Family maintenance services and a referral for family preservation services were ordered. Mother was ordered to participate in counseling approved by the Department, including individual counseling and parenting.

Initially Mother was also ordered “to undergo six random consecutive drug or alcohol tests,” and to enter a rehab program if she misses a test or tests dirty. Her attorney objected to the testing requirement, saying (1) Mother had already tested clean once, (2) there was no evidence presented to the court at the disposition hearing to support an order that Mother engage in such testing, and (3) the statements made by the manager of the trailer park to the social worker are the statements of an inappropriate witness because the manager “nearly lost his job [because of a complaint Mother filed against him].” The Department’s attorney disagreed that the evidence from the manager should be discounted, saying that because the case was at the disposition stage, the court was required to consider “absolutely everything in the record.” The court stated it understood that requirement. The Department’s attorney argued that the record “raises the specter that there is either a drug problem, an alcohol problem, and/or a mental health issue,” and the attorney added that six tests would rule out drug and alcohol problems. The minors’ attorney opined it “would be nice to see an act of good faith and have some degree of testing.”

After hearing the parties’ positions regarding drug testing, the court stated; “[I]n some ways, I agree with the mother that I don’t believe there’s sufficient evidence here that she’s using. However, I am going to allow the Department to request on-demand testing if there’s any indication that they are concerned.” The Department objected to having the tests be on-demand rather than pursuant to a specific court order that Mother submit to six random consecutive tests. The Department stated that Mother’s refusal to submit to a test would mean that the minors would have to be detained, and the

Department did not want to detain them. The court responded by saying: “Well, I understand, but I don’t think that there is sufficient evidence here for me to order it.” Thus, the court’s initial order for six random consecutive tests was amended to on-demand testing if the Department found it warranted.

CONTENTIONS ON APPEAL

Mother contends the dependency court ordered her to “undergo treatment and testing.” She further contends there is insufficient evidence to support the court’s order because there was no evidence that she had a current substance abuse problem.

DISCUSSION

Mother misstates what the trial court ultimately ordered. It did not order her to attend a treatment program per se. It did not order her to engage in testing per se. Rather, because it did not find sufficient evidence that she was currently “using,” the court gave the Department discretion to require Mother to take on-demand tests if the Department believed testing was necessary. In doing so, the court backed away from its initial pronouncement that Mother must take six random consecutive tests. We also note that when Mother’s attorney indicated that he would file a motion if he believed the Department was abusing its discretion in demanding a drug test, the court stated: “That’s fine.”

Of importance here is the trial court’s use of the words “in some ways” as a preface to its statement that it agreed with Mother that there was insufficient evidence she was “using.” While the trial court did not believe there was sufficient evidence that Mother was currently using drugs or abusing alcohol, that is, that she was using or

abusing in the period of time directly prior to the hearing, the fact that the court initially ordered six random drug tests as part of its disposition order indicates that it found that the Department's concern about substance abuse was warranted. Thus, the court was not convinced that Mother had not *previously* been engaging in substance abuse while the children were in her care, as that care was described by the school personnel, the neighbor and managers of the trailer park, and by Joseph himself when he was interviewed *prior* to his unmonitored visit with Mother. And thus, the court allowed the Department to request on-demand testing if the social worker became concerned that Mother's care of the children under the home of parent order was possibly being influenced by alcohol or drugs. We do not find the court's granting the Department discretion in the matter of testing to be an abuse of the court's discretion.

In her appellate brief, Mother states that per *In re Basilio T.* (1992) 4 Cal.App.4th 155, there is no justification for ordering treatment and testing if there is no nexus between alleged substance abuse and the petition allegations. Here, however, there is a nexus. The sustained petition alleges Mother's general neglect of the minors. There is substantial evidence of Mother's clearly inadequate care of the children with respect to feeding them, caring for their clothing, seeing to their health and safety needs, and making sure the boys arrive at school well fed and on time so that they can do their best in class. Certainly there must be an explanation for why Mother failed to attend to the minors in so many ways. Absent an admission by Mother that she simply doesn't care about the minors' well being, and given the statements of Mother's neighbor and park managers that she sometimes appears to be under the influence of something, smells of

marijuana, and has a connection with the “drug guy,” it was not unrealistic for the court to be concerned that the explanation for her neglect of the minors was drug and/or alcohol abuse.

This case is not similar to *Basilio T.*, *supra*, 4 Cal.App.4th 155, where the only evidence of possible drug use by the parents was the social worker’s concern that the mother’s “behavior and some of her comments regarding an invention she anticipated would bring her billions of dollars were drug induced” Regarding the *Basilio T.*’s mother’s comments about an invention, her attorney made an offer of proof that the parents had obtained a patent on a cold sore remedy and were attempting to market it. Regarding the mother’s “behavior,” the *Basilio T.* opinion does not disclose any behavior that would cause the social worker to believe the mother could be using drugs, and indeed, the court stated that “[o]n this record, [the mother’s] behavior, by itself, cannot support a conclusion she had a substance abuse problem.” (*Id.* at pp. 172-173, italics added.) Therefore, the reviewing court determined that the substance abuse component of the disposition order was not supported by evidence in that case.

The *Basilio T.* court cited an observation made by the court in *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1458, to wit, that “it is . . . well settled, and clearly a matter of common sense, that a reunification plan ‘must be appropriate for each family and be based on the unique facts relating to that family.’ [Citation.]” (*In re Basilio T.*, *supra*, 4 Cal.App.4th at p. 172.) *Basilio T.* also referred to the requirements of section 362, subdivision (c), which prescribes that “[t]he program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that

led to the court's finding that the child is a person described by Section 300." The *Basilio T.* court stated that nothing in the appellate record in that case "indicate[d] that a substance abuse problem led to the conditions that caused the dependency."

In contrast, here there is evidence from adults living in the same location where Mother lives that there were times when Mother appeared to be under the influence of some substance, that Mother sometimes smelled of marijuana, and that a "drug guy" sometimes leaves packages for Mother when she is not at home. Once again, we say that something was responsible for Mother's general neglect of the minors that led to neighbors, school teachers, and social workers being concerned about their health and safety, and absent an admission by Mother that she could not be bothered to attend to the children's needs, it was natural for social workers and the dependency court to consider the possibility that substance abuse or mental problems were the reason for Mother's neglect.

The court indicated that while it could not say that Mother was currently abusing drugs or alcohol, if there were indications in the future that abuse was occurring, the Department would have discretion to order Mother to test. We reject Mother's contention that the reports given to the social worker by Mother's neighbor and park managers about possible drug use were "baseless rumors and innuendo." The witnesses were reporting on what they saw, not on what others had told them. Moreover, the boys' statements that Mother was never "drunk" were based on their personal concept of what it means to be drunk. Joseph described it as being dizzy, not being able to stand, or falling down, and Dakota stated that alcohol makes you dizzy. None of those

impairments would be necessary in order for there to be a causal connection between Mother's use of alcohol and her not taking proper care of the minors. And although the boys told the social worker they had not seen Mother use drugs, they are not with her at all times, and indeed Joseph stated that he and Dakota stayed outside late on school nights because Mother's friend came over, and this happened four to five times a week. In *In re Rodger H.* (1991) 228 Cal.App.3d 1174, 1183, the court observed that from the various reports a dependency court receives, the court "will be provided with a broad spectrum of evidence shedding light on the circumstances of the minor and his or her family [citation]" and this will generally include "conduct or circumstance of family members" that is not included in the sustained allegations in the dependency petition.

Given the broad discretion a court has in fashioning a disposition order for reunification or family maintenance services (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006), we find no abuse of discretion in this case in the order for on-demand testing.

DISPOSITION

The order from which Mother has appealed is affirmed.

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CROSKEY, Acting P. J.

WE CONCUR:

KITCHING, J.

ALDRICH, J.